

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter Of)	
)	
Telecommunications Carriers Eligible for)	WC Docket No. 09-197
Universal Service Support)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
_____)	

**COMMENTS OF THE
PUBLIC UTILITY DIVISION OF THE
OKLAHOMA CORPORATION COMMISSION**

The Public Utility Division of the Oklahoma Corporation Commission (“PUD”) respectfully submits the following comments in connection with the Public Notice released March 2, 2017¹ seeking comments on the Request for Reconsideration (“Request”)² of the Wireline Competition Bureau’s reconsideration of Lifeline Broadband Provider (“LBP”) designations.³

I. Summary

PUD has followed the Lifeline Broadband Provider (“LBP”) Eligible Telecommunications Carrier (“ETC”) petitions filed with the Federal Communications Commission (“FCC”) beginning in September 2016. For all such petitions which requested a

¹ Public Notice DA 17-213, rel. March 2, 2017.

² The request was made by Free Press, 18MillionRising.org, AFL-CIO, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice – AAJC, Center for Media Justice, Center for Rural Strategies, Color of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, Fight for the Future, FOOTPRINTS INC, Generation Justice, Global Action Project, human-I-T, Inclusive Technologies, Institute for Local Self-Reliance, Media Mobilizing Project, MetroEast Community Media, Mobile Beacon, Monterey County Office of Education, NAACP, National Consumer Law Center, National Digital Inclusion Alliance, National Hispanic Media Coalition, Native Public Media, New America’s Open Technology Institute, Open MIC, Partners Bridging the Digital Divide, Public Knowledge, SPNN, The Benton Foundation, The Greenlining Institute, United Church of Christ, OC Inc., and WinstonNet, Inc. (collectively, “Petitioners”)

³ See, *Telecommunications Carriers Eligible for Universal Service Support et al.*, Order on Reconsideration, WC Docket Nos. 09-197, 11-42, DA 17-128, released February 3, 2017 (*LBP Reconsideration Order*).

service area that included Oklahoma, PUD filed a Request to hold such petitions in abeyance which included three⁴ of the nine LBP ETC designations revoked by the Wireline Competition Bureau (“WCB”) in its *LBP Reconsideration Order*. PUD’s requests raised significant concerns. First, there is an open question as to whether or not the FCC has the legal authority to pre-empt the states in granting the requested LBP ETC designations. Second, the FCC has provided no guidance as to what role the states are to play in overseeing the activities of LBP ETCs. Lastly, PUD expressed concerns that the timeframe for the streamlined LBP ETC designation process would not afford enough time for an adequate review that would be compliant with the statutory requirements as well as the FCC’s own directives for ETC designations.

PUD believes that the WCB, in its *LBP Reconsideration Order*, takes an appropriate first corrective step by revoking the granted LBP ETC designations and placing them back in pending status.⁵ PUD also believes the WCB’s concerns with waste, fraud, and abuse and interest in taking “additional time to assess measures that might be necessary to prevent further waste, fraud, and abuse in the program”⁶ are well founded.

The Petitioners, in seeking reconsideration of the *LBP Reconsideration Order*, views the WCB action as somehow prohibiting the ability of providers to offer broadband services in conjunction with the Lifeline program. PUD disagrees. Broadband Internet Access Service

⁴ See, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of Boomerang Wireless, LLC for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed October 14, 2016, *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of Kajeet, Inc. for FCC Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed October 19, 2016, and *Request of the Public Utility Division of the Oklahoma Corporation Commission to Hold in Abeyance the Petition of KonaTel, Inc. for Streamlined Designation as a Lifeline Broadband Provider Eligible Telecommunications Carrier*, WC Docket No. 09-197, filed November 28, 2016. (“Requests to Hold in Abeyance”)

⁵ PUD, in its Requests to Hold in Abeyance, specifically requested that the FCC place the LBP ETC designation petitioners on notice that their Petition would not be granted automatically in accordance with 47 C.F.R. § 54.202(d)(1).

⁶ *LBP Reconsideration Order*, ¶ 8

("BIAS") has been included in the definition of supported services⁷ and therefore, all existing ETCs are able to offer BIAS and receive support from the Lifeline program for those services. Further, the existing ETC designation process continues to be available and, just as with the existing ETCs, such newly designated ETCs will be able to offer BIAS. PUD, notwithstanding the open question as to the FCC's legal authority to pre-empt the states for purposes of designating LBP ETCs, does not support the idea that the designation process should be short-circuited simply to achieve a goal to rapidly increase the number of ETCs. To do so invites waste, fraud, and abuse.

II. Background

The WCB, in its *LBP Reconsideration Order*,⁸ set aside orders⁹ granting LBP ETC designations to a group of companies¹⁰ that had requested such designations. Some of these companies, specifically Boomerang, Kajeet, KonaTel and FreedomPop, included the state of Oklahoma as part of the service area in which they requested to be designated as an LBP ETC. In response to each of the petitions for LBP ETC designations by Boomerang, Kajeet, and KonaTel, PUD filed a Request to Hold in Abeyance.¹¹ In the instance of FreedomPop, PUD was unable to file the same request to hold FreedomPop's petition in abeyance because the December

⁷ 47 C.F.R. § 54.401

⁸ *Supra* n.3

⁹ See, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 17-87 ("January LBP Order"); *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, Order, DA 16-1325 ("December LBP Order").

¹⁰ The companies that received LBP ETC designations were Spot On Networks LLC ("Spot On"), Boomerang Wireless LLC ("Boomerang"), KonaTel Inc. ("KonaTel"), STS Media, Inc. ("FreedomPop"), Applied Research Designs, Inc. ("AR Designs"), Kajeet Inc. ("Kajeet"), Liberty Cablevision of Puerto Rico, LLC ("Liberty"), Northland Cable Television ("Northland Cable") and Wabash Independent Networks, Inc. ("WIN").

¹¹ *Supra*, n. 4

LBP Order granting LBP ETC designation to FreedomPop was issued on December 1, 2016 which was nine days prior to the comment deadline.¹²

The basis of PUD's requests to hold these petitions in abeyance was specific to the state of Oklahoma and involved concerns with: 1) the ongoing review by the United States Court of Appeals of the questions raised concerning the preemption of the states' authority to designate LBP ETCs;¹³ 2) the unresolved questions concerning the role, if any, state regulatory agencies will have in monitoring the activities of these federally designated LBP ETCs;¹⁴ and 3) the streamlined approval process not affording the FCC adequate time to appropriately review such applications in accordance with applicable rules and requirements or to make any required public interest determinations, specifically with regard to rural study areas in Oklahoma.

The Oklahoma Corporation Commission ("OCC"), in addition to reviewing ETC applications and granting ETC designations, has engaged in various forms of oversight and enforcement with regard to ETCs operating in accordance with the requirements of their designations and the applicable rules. Accordingly, PUD has significant experience in reviewing operational processes and compliance efforts utilized by ETCs in Oklahoma to avoid waste, fraud, and abuse. In addition to advocating the adoption of consumer centric rules for the delivery of Lifeline services in Oklahoma, PUD has been proactive in investigating the activities

¹² See, *Comments of the Public Utility Division of the Oklahoma Corporation Commission*, WC Docket No. 09-197, filed December 9, 2016. PUD noted that the issuance of the December LBP Order was in advance of the expiration of the comment period established for the processing of the FreedomPop Petition. The WCB, in its *LBP Reconsideration Order* at ¶ 13 addresses this problem ("We find that the *December LBP Order's* grant of LBP designation to FreedomPop and KonaTel prior to the 30-day public comment period deadline represents a clear and obvious error.")

¹³ See, *National Association of Regulatory Utility Commissioners v. Federal Communications Commission and the United States of America* Case No. 16-1170 Petition for Review (filed June 3, 2016)

¹⁴ See, *Petition for Clarification of the Pennsylvania Public Utility Commission*, WC Docket Nos. 11-42, 09-197, and 10-90, dated June 23, 2016. PUD suggested that these important questions were already before the FCC in this petition.

of ETCs and undertaking formal enforcement actions when problems that contribute to waste, fraud, and abuse are identified.¹⁵

PUD, in addition to the concerns raised in its requests to hold the LBP ETC Petitions in abeyance, which remain, believes avoidance of waste, fraud, and abuse in the Lifeline program continues to require ongoing and diligent efforts by regulators. The WCB's *LBP Reconsideration Order*, while not addressing PUD's requests specifically, has the end result of returning previously granted LBP ETC designations to a pending status. PUD supports this outcome. PUD also believes that the FCC's concern with the impact these LBP ETC designations could have on waste, fraud, and abuse is well founded and should certainly be given more consideration. Further, PUD believes that the WCB's observation that "certain providers seeking designation as an LBP failed to fulfill their obligations under section 54.202(c) of the Commission's rules"¹⁶ and that such failure "resulted in the improper grant of LBP designation"

¹⁵ See, Cause No. PUD 201300012, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission, for a Show Cause Hearing Against Easy Telephone Services Company, d/b/a Easy Wireless*, filed February 4, 2013; Cause No. PUD 201300013, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission, for a Show Cause Hearing Against Assist Wireless LLC*, filed February 4, 2013; Cause No. PUD 201300014, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission, for a Show Cause Hearing Against True Wireless, LLC*, filed February 4, 2013; Cause No. PUD 201300018, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission, for a Show Cause Hearing Against ICON Telecom, Inc.*, filed February 14, 2013; Cause No. PUD 201300020, *Application of Brandy L. Wreath, Director of the Public Utility Division, of the Oklahoma Corporation Commission, for a Show Cause Hearing Against TerraCom, Inc. d/b/a TerraCom Wireless*, filed February 14, 2013; Cause No. EN 201500035, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of Assist Wireless, LLC*, filed May 14, 2015; Cause No. EN 201300116, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of TAG Mobile, LLC*, filed December 3, 2013; Cause No. EN 201300117, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of Easy Telephone Service Company*, filed December 3, 2013; Cause No. EN 201500036, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of True Wireless, LLC*, filed May 14, 2015; Cause No. EN 201600094, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of True Wireless, LLC*, filed May 6, 2016; Cause No. PUD 201500345, *Application to Revoke the Designation of TAG Mobile, LLC as an Eligible Telecommunications Carrier*, filed September 16, 2015; and Cause No. EN 201600037, *Complaint, Information, Summons, and Notice of Enforcement Citation for Contempt of TAG Mobile, LLC*, filed February 23, 2016.

¹⁶ *Supra*, n 3, ¶ 9

is not only accurate but further supports the argument that these petitions for LBP ETC designation must be reviewed in light of all applicable rules and public interest considerations.¹⁷

III. Waste, Fraud, and Abuse Continue to Exist

PUD strongly disagrees with the assertion that concerns about waste, fraud and abuse are overstated or are somehow misplaced. While the reforms put in place by the FCC, as well as states like Oklahoma, have had a positive impact in minimizing the level of waste, fraud, and abuse in the Lifeline program, they by no means have eliminated waste, fraud, and abuse as valid concerns.

PUD is currently investigating the processes and procedures used by multiple Lifeline ETCs in establishing subscriber eligibility for Lifeline services in Oklahoma based on participation in the Bureau of Indian Affairs General Assistance Program (“BIA general assistance”).¹⁸ While the Universal Services Administration Company (“USAC”) provides specific guidance as to what documentation is required in order to demonstrate participation in BIA general assistance for purposes of qualifying for Lifeline service,¹⁹ PUD’s investigation has found multiple ETCs accepting various forms of invalid documentation (e.g., degree of Indian blood cards, Tribal paystubs, Tribal health cards) for qualification under this program. This problem exists despite the current level of progress and associated efforts to curb waste, fraud, and abuse.

¹⁷ See, 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, 47 C.F.R. § 54.202, 47 C.F.R. § 54.207 and relevant FCC decisions such as *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, Report and Order, released March 17, 2005 (“ETC Designation Order”).

¹⁸ See, *Lifeline Modernization Order*, ¶ 209 (“Low-income consumers living on Tribal lands and receiving Bureau of Indian Affairs general assistance (‘BIA general assistance’), Tribally administered Temporary Assistance for Needy Families (‘TTANF’), Head Start (only those household meeting its income qualifying standard), or FDPIR remain eligible for Lifeline.”)

¹⁹ See, USAC “Acceptable Forms of Documentation for Tribal Programs” (<http://www.usac.org/li/program-requirements/verify-eligibility/program-eligibility.aspx>).

PUD's experience also supports the expressed concern with the ability to manually (without oversight) override the restriction in NLAD intended to allow only one Lifeline subscription per independent economic household. As Chairman Pai observes, "An applicant (or, more likely an unscrupulous wireless reseller) need only check a box." PUD, through its various investigations, has had the opportunity to review completed multiple household forms, which are the basis for the override of NLAD, in a variety of situations. PUD has observed many instances where two individuals, each with the same last name, were enrolled at the same address and one of the individuals would have completed a multiple household form (a/k/a Lifeline Household Worksheet), certifying that the other individual was not a spouse or domestic partner, was not a parent, was not a son or daughter, and was not an adult relative. Eliminating all of the spouse, domestic partner or familial relationship descriptions causes the default description of the relationship as adult roommates to apply. This description provides a basis for an override of the NLAD prohibition on more than one recipient of Lifeline support per address. While it is possible that two unrelated individuals with the same last name could be living at the same address as separate economic units, PUD has seen this situation often and consistently²⁰ enough to be concerned with the validity of these certifications and, ultimately, the associated independent economic household ("IEH") override.²¹

²⁰ PUD notes that only the "spouse or domestic partner" relationships, to the extent that person is already receiving Lifeline benefits at the same address, automatically disqualifies an applicant. Other family relationships (e.g., sister, brother, parent, etc.) can still qualify for the IEH override if the applicant self-certifies that they are separate economic units. PUD finds it curious that, having reviewed multiple household forms where there are people with the same last name at the same address, PUD has rarely seen a form that identifies the relationship of the additional individual in the house as anything other than an adult roommate. Setting aside instances of conscious misrepresentation of a spouse as an adult roommate, PUD believes this "phenomenon" is indicative of a faulty process where, in completing the form, little consideration is given to the true nature of the relationships in favor of simply providing a self-certification that avoids disclosing any family relationship in order to deflect any potential additional scrutiny.

²¹ See, Commissioner Pai's June 8, 2016 letter to Mr. Chris Henderson, CEO, Universal Service Administrative Company. "It is alarming that over one-third of subscribers – costing taxpayers almost half a billion dollars a year – were registered through an IEH override."

PUD suggests that, in order to minimize the negative impact of these types of process/operational failings, the investigation into the applicant for ETC designation (LBP or otherwise) and their ability to avoid waste, fraud, and abuse in its many forms, should take place on the front-end of the designation process as opposed to waiting until these issues manifest after LBP ETC designation has been granted.²² Accordingly, PUD supports the FCC's actions in the *LBP Reconsideration Order* to revoke those LBP ETC designations and return them to pending status.²³

IV. Broadband Service and Support is Available Today

The allegations that the WCB's *LBP Reconsideration Order* stands in the way of the modernization of the Lifeline program are overstated. The FCC's *Lifeline Modernization Order* "...amended the definition of Lifeline to include broadband Internet access service (BIAS) as a supported service."²⁴ This has cleared the path for existing ETCs to offer mobile or fixed BIAS (on a standalone basis or in combination with voice service) and receive support from the Lifeline program with or without a LBP ETC designation. In fact, nine of the wireless carriers with pending LBP ETC designation petitions, including Boomerang, are already offering BIAS to consumers in Oklahoma through their existing ETC designations granted by the OCC.

²² See, *File No.: EB-IHD-14-00017212*, DA 16-790, released July 15, 2016, ("Consent Decree") ¶ 4 "This settlement ensures a total of \$2,002,000 in reimbursements by Blue Jay to the Universal Service Fund, including the company's forfeiture of the \$918,010 in Lifeline disbursements that WCB had previously frozen. Blue Jay also will develop and implement a compliance plan to ensure appropriate procedures are incorporated into its business practices to prevent the enrollment of ineligible Tribal consumers, including the use of any USAC-approved software tool to identify and verify the accuracy of consumers' self-certification of their residency on Tribal Lands."

²³ PUD continues to request that these LBP ETC designation petitions be held in abeyance pending the United States Court of Appeals review of the FCC's authority to grant such designations as well as the FCC's own action on the *Petition for Clarification of the Pennsylvania Public Utility Commission*.

²⁴ *Lifeline Modernization Order*, ¶ 30

While other providers with revoked but now pending LBP ETC designation petitions do not currently have ETC designation in Oklahoma (Kajeet, KonaTel, and FreedomPop)²⁵, their delayed entry into the marketplace has not stymied the competitive efforts of those with existing ETC designations to offer broadband services supported by Lifeline. The following is a comparison of the most robust (i.e., highest level of voice minutes and data) and most basic (i.e., lowest level of voice minutes and data) offerings meeting the minimum service standards for BIAS for Tribal and Non-Tribal subscribers in Oklahoma from Assist, Blue Jay, Boomerang, and Easy.

	<u>Plan</u>	<u>Non-Tribal</u>	<u>Tribal</u>
Assist	Unlimited Voice/2GB data	\$40.00	\$15.00
	50 Min Voice/500MB data	FREE	N/A
	1000 Min Voice/500MB data	\$10.00	FREE
Blue Jay	Unlimited Voice/1GB data	N/A	FREE
	250 Min Voice/500MB	FREE	N/A
Boomerang	Unlimited Voice/750MB data	N/A	FREE
	100 Min Voice/500MB data	FREE	N/A
Easy	Unlimited Voice/500MB data	\$34.95	\$ 9.95
	2250 Min Voice/2048MB data	\$49.95	\$24.95
	50 Min Voice/500MB data	FREE	N/A
	2250 Min Voice/500MB data	N/A	FREE

Given that BIAS offerings already exist in the marketplace and there is competition among the existing providers, the regulatory balance to be struck is not about the availability of BIAS. The regulatory balance in this circumstance must be between the designation of additional providers (e.g., LBP ETCs) to increase the number of competitors and the necessity to follow the statutes and rules that govern the ETC designation process, including but not limited

²⁵ Aside from Boomerang and these three carriers, none of the other revoked LBP ETC petitioners were seeking designation within Oklahoma.

to, the rules and statutes that mandate public interest determinations and safeguards against waste, fraud, and abuse. PUD asserts that the ends (i.e., increased number of competitors) do not justify the means (i.e., a streamlined LBP designation process without proper legal authority and implementation of shortcuts that circumvent the full benefit and requirements of the ETC designation statutes and rules).

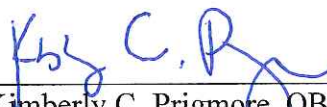
PUD further supports the WCB's interest in taking time to "...consider measures that might be necessary to prevent further waste, fraud, and abuse in the Lifeline Program."²⁶ PUD's experience with oversight and enforcement of rules related to the provision of Lifeline service would dictate that failure to continue to review and take steps to minimize or eliminate waste, fraud, and abuse is to invite such problems.

²⁶ *LBP Reconsideration Order*, ¶ 7

V. Conclusion

PUD supports the WCB's decision in its *LBP Reconsideration Order* to revoke the previously granted LBP ETC designations and return them to a pending status. PUD urges the WCB to not reverse this determination, and hold all pending LBP ETC designation petitions that include Oklahoma within its requested service area, both revoked and those that have remained pending, in abeyance until 1) the D.C. Circuit Court rules on NARUC's Petition for Review;²⁷ and 2) the FCC responds to the Pennsylvania Public Utility Commission's Petition for Clarification.²⁸

Respectfully submitted,



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²⁷ *Supra* n.13
²⁸ *Supra* n. 14